IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14141 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHARMILABEN W/O KAMLESHBHAI LALJIBHAI KHARVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14141 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

Mr. MA Patel, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2003

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on 4th September, 2003 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration five prohibition cases registered against the petitioner, so also the statements of two anonymous witnesses dated the 28th August, 2003. The statements were verified on 31st August, 2003. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the authority has not undertaken the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. He submitted further that the grounds of detention do not indicate any satisfaction recorded by the detaining authority to indicate that the activities of the detenu are detrimental to public health and, therefore, there is improper exercise of powers under Section 3 of the PASA Act. He further submitted that, so far as the offences are concerned, they relate to bootlegging and there is no disturbance to public order. He submitted that the petition may, therefore, be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. Considering the rival side contentions, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a

balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Kajalben G. Sindhi v. Commissioner of Police, 2000(1) GLH 320 and Kishore Naginbhai Parmar v. State of Gujarat & Ors., 2000(4) GLR 3236).

6. So far as the offences are concerned, they relate to prohibition cases and in light of decision recorded by Division Bench of this Court in Letters Patent Appeal No.223 of 2000 dated the 22nd August, 2000, in absence of any contemporaneous material, the satisfaction recording damage to public health and disturbance to public order cannot be considered as genuine. The satisfaction, therefore, for exercise of powers under the PASA Act for detaining cannot be considered as genuine and cannot be upheld.

7. In the result, the petition is allowed. The impugned order of detention dated 4th September, 2003, passed against the detenu, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

8. Direct service is permitted.

[A.L. DAVE, J.]

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